

REMARKS

Applicants thank the Office for indicating that claims 41-42 and 44-45 are free of the prior art. By this amendment Applicants have canceled claims 1-4, 6-7, 11-14, 25-26, 28-29, 33-34, and 36-37 without prejudice to or disclaimer of the subject matter recited therein. Upon entry of this amendment, the only remaining claims are allowed claims 41-42 and 44-45.

Rejection Under 35 U.S.C. § 112 (obviated by cancelation)

The Office has rejected claims 1 and 11 as non-enabled under 35 U.S.C. § 112, 1st paragraph.

Applicants have obviated this rejection canceling claims 1 and 11, without prejudice or disclaimer to pursuing the subject matter of said claims in a continuing application.

Rejection for Nonstatutory Double Patenting (obviated by terminal disclaimer)

The Office has rejected claims 1, 11, 41-42 and 44-45 under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over claims 1, 11, 41-42 and 44-45 of co-pending Application No. 09/873,298.

Applicants have obviated this rejection by filing herewith a terminal disclaimer identifying the '298 application. In doing so, Applicants do not admit the propriety of the rejection. See M.P.E.P. 804.02.II (quoting *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 U.S.P.Q.2d 1392 (Fed. Cir. 1991) (“The filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. . . . ‘[it] simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection.’”).

Applicants note that examination of the application 09/873,298 has been suspended pending a decision by the Board to declare an interference with U.S. Patent No. 6,124,328.

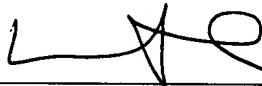
CONCLUSION

Applicants believe that by filing a terminal disclaimer over the '298 application and by canceling all but the allowed claims, the present application is in condition for allowance and expedited consideration of the concurrently-filed request for declaration of interference.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such an extension under 37 C.F.R. § 1.136 and authorize payment of any such extension to Deposit Account No. 19-0741.

Respectfully submitted,

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